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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,834	03/31/2004	Keiichiro Tounai	NEC A433	6044
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HAYES SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			EXAMINER PARK, EDWARD	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,834

Applicant(s)

TOUNAI, KEIICHIRO

Examiner

Edward Park

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This action is responsive to applicant's amendment and remarks received on 10/15/07. Claims 1-20 are currently pending.
2. The declaration filed on 10/15/07 under 37 CFR 1.131 is sufficient to overcome the Kobayashi reference.

Drawings

3. The drawings were received on 10/15/07. These drawings are acceptable and the previous drawing objections have been withdrawn.

Specification

4. In response to applicant's amendment to the title, the previous objection to the title has been withdrawn.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

6. **Claim 8-14** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claims 8-14 recite "a program on computer-readable medium for causing a computer to carry out a method of testing a mask pattern". Therefore, these claims are drawn to functional descriptive material (i.e., a computer program or software) recorded on a computer readable medium, as opposed to a computer readable medium storing/embodying the functional descriptive material. The former defines a computer program or software per se, recited as residing on a computer readable medium. However, because the claim begins by defining purely software, and the storage thereof may be interpreted as an intended use or purpose statement, it appears that the claim is defining the software per se. A "program" per se is non-statutory, as being an abstract idea. The element of "stored on a computer readable memory" may be where it

is stored, but it is the program itself that is being claimed (and again, programs or software per se. are non-statutory).

The latter recites a statutory product (i.e., a computer readable medium), defined by virtue of the functional descriptive material embodied thereon. Claims conforming to 35 USC 101 for computer implemented software should be directed to computer readable media embodying a program, NOT a program stored on a computer readable medium ("a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035; - *Interim Guidelines, Annex IV*).

The examiner suggest reversing the preamble language to read, "A computer readable medium storing a program for causing a computer to carry out a method of testing a mask pattern".

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1, 2, 3, 8, 9, 10, 15, 16, 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Garza et al (US 5,705,301) in view of Kamon (US 6,453,274 B2).

Regarding **claims 1, 2, 3**, Garza discloses a method of testing a mask pattern, comprising the steps of:

applying optical proximity-effect compensation to a first pattern to be tested and to be formed onto a mask layer, to thereby actually form a mask pattern of said mask layer (see figure 5c; col. 11, lines 40-46; col. 1, lines 63-67; col. 2, lines 1-7 corrected IC layout design through optical proximity correction);

dividing said first pattern into a plurality of areas in accordance with a second pattern to be formed onto another mask layer (see figure 5b; col. 8, lines 41-62 divided into grid regions where OPC sequentially operates on each grid region);

determining sampling points on an edge of said first pattern (figure 5c, col. 11, lines 40-46);

simulating a resist pattern formed on a resist by exposing said resist to a light through said mask pattern (see col. 13, lines 11-21). Garza does not disclose determining a test standard for each of said areas; checking whether a dimensional gap between said first pattern and said resist pattern at each of said sampling points is within a test standard associated with an area to which each of said sampling points belongs, wherein a test standard for a first area among said areas and a test standard for a second area among said areas are different from each other; sampling points, is determined in accordance with a N-th process in said step (c) wherein N indicates an integer equal to or greater than one ($N = 1, 2, 3, 4, \dots$), and first to N-th processes are different from one another; and dividing an edge of said first pattern into a plurality of portions, wherein said test standard is determined for each of said portions.

Kamon, in the same field of endeavor, teaches determining a test standard for each of said areas (see figure 5, numeral S3; col. 5, lines 14-31 pattern prediction unit 4 predicts the size of a pattern which will be finally obtained after a pattern transfer process); checking whether a dimensional gap between said first pattern and said resist pattern at each of said sampling points is within a test standard associated with an area to which each of said sampling points belongs, wherein a test standard for a first area among said areas and a test standard for a second area among said areas are different from each other (see figure 5, numeral s6; col. 5, lines 32-47 determination unit 7 determines whether correction amount is within the predefined allowable range); sampling points, is determined in accordance with a N-th process in said step (c) wherein N indicates an integer equal to or greater than one ($N = 1, 2, 3, 4, \dots$), and first to N-th processes are different from one another (see figures 8b, 9b; col. 8, lines 45-67; col. 9, lines 1-7); and dividing an edge of said first pattern into a plurality of portions (see figure 8b), wherein said test standard is determined for each of said portions (see figure 5, numeral S3).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza reference to utilize a test standard and different processes as taught by Kamon, to allow the "final pattern size [to have] a required accuracy" (col. 5, lines 48-55) and "great reduction in correction time" (col. 8, lines 50-55) which is essential in mask/reticle fabrication.

Regarding **claims 8, 9, 10**, Garza discloses a program on computer-readable medium for causing a computer to carry out a method of testing a mask pattern (figure 3, numerals 252, 271, 268, 269, 271, 256, 258 general purpose computer system representing one of many suitable computer platforms for implementing the inventive optical proximity correction methods),

wherein said method is executed by said computer in accordance with said program including the steps of:

applying optical proximity-effect compensation to a first pattern to be tested and to be formed onto a mask layer, to thereby actually form a mask pattern of said mask layer (see figure 5c; col. 11, lines 40-46; col. 1, lines 63-67; col. 2, lines 1-7 corrected IC layout design through optical proximity correction);

dividing said first pattern into a plurality of areas in accordance with a second pattern to be formed onto another mask layer (see figure 5b; col. 8, lines 41-62 divided into grid regions where OPC sequentially operates on each grid region);

determining sampling points on an edge of said first pattern (figure 5c, col. 11, lines 40-46);

simulating a resist pattern formed on a resist by exposing said resist to a light through said mask pattern (see col. 13, lines 11-21). Garza does not disclose determining a test standard for each of said areas; checking whether a dimensional gap between said first pattern and said resist pattern at each of said sampling points is within a test standard associated with an area to which each of said sampling points belongs, wherein a test standard for a first area among said areas and a test standard for a second area among said areas are different from each other; sampling points, is determined in accordance with a N-th process in said step (c) wherein N indicates an integer equal to or greater than one ($N = 1, 2, 3, 4, \dots$), and first to N-th processes are different from one another; and dividing an edge of said first pattern into a plurality of portions, wherein said test standard is determined for each of said portions.

Kamon, in the same field of endeavor, teaches determining a test standard for each of said areas (see figure 5, numeral S3; col. 5, lines 14-31 pattern prediction unit 4 predicts the size of a pattern which will be finally obtained after a pattern transfer process); checking whether a dimensional gap between said first pattern and said resist pattern at each of said sampling points is within a test standard associated with an area to which each of said sampling points belongs, wherein a test standard for a first area among said areas and a test standard for a second area among said areas are different from each other (see figure 5, numeral s6; col. 5, lines 32-47 determination unit 7 determines whether correction amount is within the predefined allowable range); sampling points, is determined in accordance with a N-th process in said step (c) wherein N indicates an integer equal to or greater than one ($N = 1, 2, 3, 4, \dots$), and first to N-th processes are different from one another (see figures 8b, 9b; col. 8, lines 45-67; col. 9, lines 1-7); and dividing an edge of said first pattern into a plurality of portions (see figure 8b), wherein said test standard is determined for each of said portions (see figure 5, numeral S3).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza reference to utilize a test standard and different processes as taught by Kamon, to allow the “final pattern size [to have] a required accuracy” (col. 5, lines 48-55) and “great reduction in correction time” (col. 8, lines 50-55) which is essential in mask/reticle fabrication.

Regarding **claim 15, 16, 17**, Garza discloses a method of forming a mask having a desired mask pattern including the steps of:

applying optical proximity-effect compensation to a first pattern to be tested and to be formed onto a mask layer, to thereby actually form a mask pattern of said mask layer (see figure

5c; col. 11, lines 40-46; col. 1, lines 63-67; col. 2, lines 1-7 corrected IC layout design through optical proximity correction);

dividing said first pattern into a plurality of areas in accordance with a second pattern to be formed onto another mask layer (see figure 5b; col. 8, lines 41-62 divided into grid regions where OPC sequentially operates on each grid region);

determining sampling points on an edge of said first pattern (figure 5c, col. 11, lines 40-46);

simulating a resist pattern formed on a resist by exposing said resist to a light through said mask pattern (see col. 13, lines 11-21); and transferring said mask pattern onto a mask (see col. 11, lines 60-67 IC layout design 600 may be transferred onto an actual glass and chromium (or other material) reticle). Garza does not disclose determining a test standard for each of said areas; checking whether a dimensional gap between said first pattern and said resist pattern at each of said sampling points is within a test standard associated with an area to which each of said sampling points belongs, wherein a test standard for a first area among said areas and a test standard for a second area among said areas are different from each other; sampling points, is determined in accordance with a N-th process in said step (c) wherein N indicates an integer equal to or greater than one ($N = 1, 2, 3, 4, \dots$), and first to N-th processes are different from one another; and dividing an edge of said first pattern into a plurality of portions, wherein said test standard is determined for each of said portions.

Kamon, in the same field of endeavor, teaches determining a test standard for each of said areas (see figure 5, numeral S3; col. 5, lines 14-31 pattern prediction unit 4 predicts the size of a pattern which will be finally obtained after a pattern transfer process); checking whether a

dimensional gap between said first pattern and said resist pattern at each of said sampling points is within a test standard associated with an area to which each of said sampling points belongs, wherein a test standard for a first area among said areas and a test standard for a second area among said areas are different from each other (see figure 5, numeral s6; col. 5, lines 32-47 determination unit 7 determines whether correction amount is within the predefined allowable range); sampling points, is determined in accordance with a N-th process in said step (c) wherein N indicates an integer equal to or greater than one ($N = 1, 2, 3, 4, \dots$), and first to N-th processes are different from one another (see figures 8b, 9b; col. 8, lines 45-67; col. 9, lines 1-7); and dividing an edge of said first pattern into a plurality of portions (see figure 8b), wherein said test standard is determined for each of said portions (see figure 5, numeral S3).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza reference to utilize a test standard and different processes as taught by Kamon, to allow the "final pattern size [to have] a required accuracy" (col. 5, lines 48-55) and "great reduction in correction time" (col. 8, lines 50-55) which is essential in mask/reticle fabrication.

9. **Claims 4, 5, 11, 12, 18, 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Garza et al (US 5,705,301) with Kamon (US 6,453,274 B2), and further in view of Tounai et al (US 2002/0043615 A1).

Regarding **claims 4 and 5**, Garza with Kamon combination discloses all elements as mentioned above in claim 1. Garza with Kamon combination does not teach a first pattern that is a pattern for forming a wiring layer, said second pattern is a pattern for forming a contact reaching said wiring layer, and said first area includes a third area including a contact area in

which said contact makes contact with said wiring layer; and third area is comprised of said contact area and an ambient area surrounding said contact area.

Tounai teaches a first pattern that is a pattern for forming a wiring layer, said second pattern is a pattern for forming a contact reaching said wiring layer, and said first area includes a third area including a contact area in which said contact makes contact with said wiring layer (figure 13; paragraphs [0093]-[0096]); and third area is comprised of said contact area and an ambient area surrounding said contact area (figure 13; paragraphs [0093]-[0096]).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza with Kamon combination to utilize a first pattern, second pattern, and a third area as suggested by Tounai, to fabricate/simulate a mask pattern and to increase reliability of correcting an optical proximity effect of the section around the contact area.

Regarding **claims 11 and 12**, Garza with Kamon combination discloses all elements as mentioned above in claim 8. Garza with Kamon combination does not teach a first pattern that is a pattern for forming a wiring layer, said second pattern is a pattern for forming a contact reaching said wiring layer, and said first area includes a third area including a contact area in which said contact makes contact with said wiring layer; and third area is comprised of said contact area and an ambient area surrounding said contact area.

Tounai teaches a first pattern that is a pattern for forming a wiring layer, said second pattern is a pattern for forming a contact reaching said wiring layer, and said first area includes a third area including a contact area in which said contact makes contact with said wiring layer (figure 13; paragraphs [0093]-[0096]); and third area is comprised of said contact area and an ambient area surrounding said contact area (figure 13; paragraphs [0093]-[0096]).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza with Kamon combination to utilize a first pattern, second pattern, and a third area as suggested by Tounai, to fabricate/simulate a mask pattern and to increase reliability of correcting an optical proximity effect of the section around the contact area.

Regarding **claims 18 and 19**, Garza with Kamon combination discloses all elements as mentioned above in claim 15. Garza with Kamon combination does not teach a first pattern that is a pattern for forming a wiring layer, said second pattern is a pattern for forming a contact reaching said wiring layer, and said first area includes a third area including a contact area in which said contact makes contact with said wiring layer; and third area is comprised of said contact area and an ambient area surrounding said contact area.

Tounai teaches a first pattern that is a pattern for forming a wiring layer, said second pattern is a pattern for forming a contact reaching said wiring layer, and said first area includes a third area including a contact area in which said contact makes contact with said wiring layer (figure 13; paragraphs [0093]-[0096]); and third area is comprised of said contact area and an ambient area surrounding said contact area (figure 13; paragraphs [0093]-[0096]).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza with Kamon combination to utilize a first pattern, second pattern, and a third area as suggested by Tounai, to fabricate/simulate a mask pattern and to increase reliability of correcting an optical proximity effect of the section around the contact area.

10. **Claims 6, 7, 13, 14, 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Garza et al (US 5,705,301) with Kamon (US 6,453,274 B2), and further in view of Magoshi et al (US 6,316,163 B1).

Regarding **claims 6 and 7**, Garza with Kamon combination discloses all elements as mentioned above in claim 1. Garza with Kamon combination does not teach a first pattern that is a pattern for forming a wiring layer including a gate of a MOS transistor, said second pattern is a pattern for forming an active area of said MOS transistor, and said first area includes a fourth area including a fifth area obtained by projecting said active area onto said first pattern, and a fourth area that is comprised of said fifth area and an ambient area surrounding said fifth area.

Magoshi teaches a first pattern that is a pattern for forming a wiring layer including a gate of a MOS transistor, said second pattern is a pattern for forming an active area of said MOS transistor, and said first area includes a fourth area including a fifth area obtained by projecting said active area onto said first pattern, and a fourth area that is comprised of said fifth area and an ambient area surrounding said fifth area (figure 2; Magoshi: col. 5, lines 58-67; col. 6, lines 1-13).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza with Kamon combination to utilize a first pattern for forming a wiring layer, second pattern for forming an active area, and a fourth area comprised of a fifth area and an ambient area as suggested by Magoshi, to perform the steps of “forming patterns involving pattern transfer to the same photosensitive material” (Magoshi: col. 8, lines 32-45).

Regarding **claims 13 and 14**, Garza with Kamon combination discloses all elements as mentioned above in claim 8. Garza with Kamon combination does not teach a first pattern that is a pattern for forming a wiring layer including a gate of a MOS transistor, said second pattern is a pattern for forming an active area of said MOS transistor, and said first area includes a fourth

area including a fifth area obtained by projecting said active area onto said first pattern, and a fourth area that is comprised of said fifth area and an ambient area surrounding said fifth area.

Magoshi teaches a first pattern that is a pattern for forming a wiring layer including a gate of a MOS transistor, said second pattern is a pattern for forming an active area of said MOS transistor, and said first area includes a fourth area including a fifth area obtained by projecting said active area onto said first pattern, and a fourth area that is comprised of said fifth area and an ambient area surrounding said fifth area (figure 2; Magoshi: col. 5, lines 58-67; col. 6, lines 1-13).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza with Kamon combination to utilize a first pattern for forming a wiring layer, second pattern for forming an active area, and a fourth area comprised of a fifth area and an ambient area as suggested by Magoshi, to perform the steps of “forming patterns involving pattern transfer to the same photosensitive material” (Magoshi: col. 8, lines 32-45).

Regarding **claim 20**, Garza with Kamon combination discloses all elements as mentioned above in claim 15. Garza with Kamon combination does not teach a first pattern that is a pattern for forming a wiring layer including a gate of a MOS transistor, said second pattern is a pattern for forming an active area of said MOS transistor, and said first area includes a fourth area including a fifth area obtained by projecting said active area onto said first pattern.

Magoshi teaches a first pattern that is a pattern for forming a wiring layer including a gate of a MOS transistor, said second pattern is a pattern for forming an active area of said MOS transistor, and said first area includes a fourth area including a fifth area obtained by projecting said active area onto said first pattern (figure 2; Magoshi: col. 5, lines 58-67; col. 6, lines 1-13).

It would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the Garza with Kamon combination to utilize a first pattern for forming a wiring layer, and second pattern for forming an active area as suggested by Magoshi, to perform the steps of "forming patterns involving pattern transfer to the same photosensitive material" (Magoshi: col. 8, lines 32-45).

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Park whose telephone number is (571) 270-1576. The examiner can normally be reached on M-F 10:30 - 20:00, (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vikram Bali can be reached on (571) 272-7415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

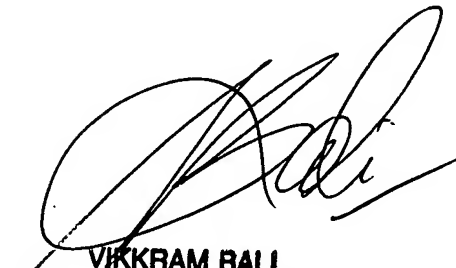
Application/Control Number:
10/813,834
Art Unit: 2624

Page 16

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Edward Park
Examiner
Art Unit 2624

/Edward Park/



VIKKRAM BALI
PRIMARY EXAMINER